

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
WHP Licensee, LLC)	
)	CSR-8915-N
Petition for Special Relief For Waiver of)	Docket No. 15-232
Section 76.92(f) and 76.106 of the)	
Commission's Rules for WHP-TV,)	
Harrisburg, Pennsylvania)	

To: Secretary, Federal Communications Commission
Attn: Media Bureau

COMMENTS TO PETITION FOR SPECIAL RELIEF

Pursuant to Section 76.7(b)(1) of the rules of the Federal Communications Commission ("Commission"),¹ ABC, Inc. ("ABC"), licensee of commercial television station WPVI-TV, Philadelphia, Pennsylvania ("WPVI"), by its attorneys, hereby submits these Comments ("Comments") to the Petition for Special Relief ("Petition") filed by WHP Licensee, LLC. ("WHP Licensee"), licensee of WHP-TV, Harrisburg, Pennsylvania ("WHP").²

I. BACKGROUND

In its Petition, WHP Licensee seeks a waiver of Sections 76.92(f) and 76.106 of the Commission's rules, the significantly viewed exception ("SV Exception") to the network non-

¹ 47 C.F.R. § 76.7(b)(1).

² See Petition for Special Relief, WHP Licensee, LLC ("Petition"). The Petition was placed on public notice on October 1, 2015 (Rep. No. 0436).

duplication and syndicated exclusivity rules (“Exclusivity Rules”).³ Specifically, WHP Licensee seeks to enforce its network program non-duplication protection rights against WPHL-TV, licensed to Philadelphia, Pennsylvania, and KYW-TV, licensed to Philadelphia, Pennsylvania, in Elizabethtown and Lancaster, Pennsylvania (the “Communities”).

Although WPVI is not the subject of this Petition, as licensee of a station with significantly viewed status in Lancaster County,⁴ ABC has an interest in ensuring that any petition for a waiver of Sections 76.92(f) and 76.106 of the Commission’s rules includes data and showings that meet the FCC requirements and procedures governing waivers to the significantly viewed exception to the network non-duplication rule. As set forth below, the data submitted by WHP for stations WPHL-TV and KYW-TV in support of its waiver request is inconsistent and ambiguous. Before the Commission acts on the Petition, it should require WHP to correct or clarify the information in accordance with the FCC’s established procedures and requirements governing petitions for waivers of the significantly viewed exception.

II. DISCUSSION

A broadcast licensee seeking a waiver of the SV Exception to the Exclusivity Rules faces a high burden of proof. A petitioner must demonstrate, for two consecutive years, that the protected station is no longer significantly viewed in the community, based either on community-specific or system-specific, non-cable viewing data.⁵ A petitioner may submit the results from

³ 47 C.F.R. § 76.92(f) (significantly viewed exception to the network non-duplication rule); 47 C.F.R. § 76.106 (significantly viewed exception to the syndicated exclusivity rule).

⁴ See *Reconsideration of the Cable Television Report and Order*, Memorandum Opinion and Order on Reconsideration, 36 FCC 2d 326 (1972).

⁵ *KCST-TV, Inc.*, 103 FCC 2d 407 (1986).

two Nielsen Media Research (“Nielsen”) sweep periods for each of the two years as evidence that a station is no longer significantly viewed.⁶

In support of its Petition, WHP provides community-specific Nielsen audience data based on noncable/non-ADS households for WPHL-TV and KYW-TV located in the zip codes of Lancaster, Pennsylvania and Elizabethtown, Pennsylvania from the sweep periods for February and November of 2012 and February and November of 2013.⁷ Nielsen includes in its survey of KYW-TV households the zip codes 17601, 17602, and 17603 for Lancaster, Pennsylvania. By contrast, Nielsen includes in its survey of WPHL-TV households the three zip codes mentioned above plus the zip code 17611 for Lancaster, Pennsylvania. Accordingly, the Lancaster community is defined inconsistently across the two surveys. All four zip codes are associated with Lancaster, Pennsylvania,⁸ so it is unclear why the fourth zip code (and presumably any in-tab diaries from that zip code) was omitted from the KYW-TV survey. Despite the inconsistency in zip codes, the number of in-tabs for both WPHL-TV and KYW-TV for the two years is identical, which raises the question whether there were zero in-tabs for zip code 17611 or if a different set of 14 in-tab diaries was used for each station. Clarification, correction, or an explanation of the apparent inconsistent use of in-tabs to establish viewing levels in the Lancaster, Pennsylvania community for each Station should be provided before the FCC acts on the Petition.

⁶ *E.g., WPEC Licensee, LLC*, 30 FCC Rcd 364, 365 (2015).

⁷ Petition at Exhibit A.


⁸ See U.S. Postal Service, Look Up a ZIP Code, <https://tools.usps.com/go/ZipLookupAction!input.action> (choose “Cities by ZIP Code™” Tab, and then type in 17611) (last visited October 20, 2015)

III. CONCLUSION

For the reasons set forth above, ABC respectfully submits that the WHP Licensee submit additional information sufficient to clarify the apparent inconsistency in the Nielsen data.

Respectfully submitted,

ABC, INC.

By: 

Susan L. Fox, Esq.
Vice President, Government Relations
THE WALT DISNEY COMPANY
1150 17th Street, N.W., Suite 400
Washington, DC 20036
(202) 222-4700

Tom W. Davidson, Esq.
AKIN GUMP STRAUSS HAUER & FELD LLP
1333 New Hampshire Ave., N.W.
Suite 400
Washington, DC 20036
(202) 887-4011

Its Attorneys

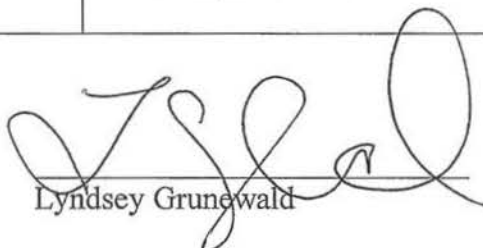
October 21, 2015

CERTIFICATE OF SERVICE

I, Lyndsey Grunewald, of Akin Gump Strauss Hauer & Feld, LLP, certify that a copy of the foregoing Comments to Petition for Special Relief filed on behalf of ABC, Inc., was served via first-class mail on this 21st day of October 2015, upon the following:

*Marlene Dortch Media Bureau Federal Communications Commission 445 12 th Street, Washington, D.C. 20554	Comcast Cable 1311 S. Duke Street Lancaster, PA 17603
WPHL-TV WPHL, LLC 5001 Wynnefield Avenue Philadelphia, PA 19131	KYW-TV CBS Broadcasting Inc. 1800 K Street, N.W. Suite 920 Washington, D.C. 20006
WHTM-TV 3235 Hoffman Street Post Office Box 5860 Harrisburg, PA 17110	WPMT(TV) WPMT, LLC 2005 South Queen Street York, PA 17403
WGAL(TV) WGAL Hearst Television, Inc. Post Office Box 1800 c/o Brooks Pierce, et al. Raleigh, NC 27602	WLYH-TV Nexstar Broadcasting, Inc. 545 E. John Carpenter Freeway Suite 700 Irving, TX 75062
WITF-TV WITF, Inc. 4801 Lindle Road Harrisburg, PA 17111	WGCB-TV NRJ TV RL License Co., LLC 722 S. Denton Tap Road Suite 130 Coppell, TX 75019
Elizabethtown Borough 60 South Hanover Street Elizabethtown, PA 17022	City of Lancaster 120 North Duke Street Post Office Box 1599 Lancaster, PA 17608

<p>WFMZ-TV Maranatha Broadcasting Company, Inc. 300 East Rock Road Allentown, PA 18103</p>	<p>WBPH-TV Sonshine Family Television, Inc. 813 N. Fenwick Street Allentown, PA 18109</p>
<p>WBRE-TV Nexstar Broadcasting, Inc. 545 E. John Carpenter Freeway Suite 700 Irving, TX 75602</p>	<p>WCAU(TV) NCB Telemundo License LLC 300 New Jersey Avenue, N.W. Washington, D.C. 20001</p>
<p>WTVE(TV) NRJ TV Philly License Co., LLC 722 S. Denton Tap Road Suite 130 Coppell, TX 75019</p>	<p>WNEP-TV Local TV Pennsylvania License, LLC 16 Montage Mountain Road Moosie, PA 18507</p>
<p>WHP 3300 North 6th Street Harrisburg, PA 17110</p>	<p>WYOU(TV) Mission Broadcasting, Inc. 30400 Detroit Road Suite 304 Westlake, OH 44145</p>


Lyndsey Grunewald